

A Judge's Guide to the
Soldiers' and Sailors' Civil Relief Act
(SSCRA)
and the
Uniformed Services Employment and
Reemployment Rights Act
(USERRA)

THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT

Soldiers' and Sailors' Civil Relief Act of 1940, as amended -
50 U.S.C. App. §§501-593.

Purpose:

- Over the past 140 years, Congress has enacted various statutes which suspended or limited the pre-service financial or legal obligations of soldiers and sailors who are serving in the military, to ensure that they could devote their full energies and attention to the important national responsibilities they have undertaken.
- Congress recognized the need for protecting persons in the military service by enacting civil relief legislation to **suspend** the enforcement of certain civil liabilities during the period of service (and a short period thereafter) so that the military member can devote all of his or her entire energy to the defense needs of the nation (§510).

Persons Covered by the Act:

- All persons on Federal active duty
 - Includes
 - regular members of the Armed Forces (Army, Navy, Air Force, Marine Corps and Coast Guard), Reserve, National Guard and Air National Guard personnel who have been activated and are on Federal active duty (whether as volunteers or as a result of involuntary activation);
 - Inductees serving with the armed forces;
 - Public Health Service Officers detailed for duty with the armed forces; and
 - Persons who are training or studying under the supervision of the United States preliminary to induction (§511).
- Certain benefits are extended to
 - dependents of person in the military service (§536),
 - certain persons who have guaranteed obligations of service personnel (§513); and
 - citizens of the United States serving with the armed forces of the U. S. allies during the time of war (§514).

Persons NOT covered by the Act:

- No coverage or protection for members of Reserve, National Guard and Air National Guard components not on active duty;
- No coverage for retired personnel (must be on active duty)
- No coverage for military personnel who make appearances in suits (***but, stay provisions do apply***);

No coverage for National Guard and Air National Guard troops called to duty under Title 32 U.S.C. **state** orders (i.e., Governor of State calls Guard to duty in emergencies, insurrections)

When the Act Applies:

- The Act applies when the member is on active duty.
- Active duty begins on the date of entry on active duty and ends on the date of discharge or death while in the active service (§511(2)).
- Enlisted Reservists and Guardsmen and draftees may seek relief as soon as they receive orders to report for active duty or induction (§516).

Default Judgments:

- Affidavit of non-military service is required in **all default judgments** (§520 (1)).
- Willful falsification of affidavit is a misdemeanor and may be punished by imprisonment of up to one year and a fine of up to \$100,000.00 (§520(2)).
- Obtaining certificates of service (§581) -- going to be very difficult to obtain. Probably have to go with affidavits of non-military service.
- If no affidavit of non-military service is filed, court **MAY NOT** enter judgment against defendant until it has **appointed an attorney** to represent the party and protect his/her interest.
- Additionally, the court **MAY** require the plaintiff to file a **bond** to indemnify the defendant against any damages that defendant may suffer in the default judgment should later be set aside in whole or in part.

- Court “may make such other and further order or enter such judgment as in its opinion may be necessary to protect the rights of the defendant under [the] Act.” (§520(1))
- Re-opening default judgments (§520(4)):
 - May be done for any judgment rendered while member on active duty or within 30 days of release from active duty;
 - May be re-opened by the member at any time up to 90 days after termination of service;
 - Defendant must have been prejudiced by reason of military service in making a defense
 - (e.g., “Well, I was in Turkmenistan at the time, Your Honor. We were a little busy and my commander denied my leave.”);
 - It must appear that the defendant had a meritorious or legal defense to the action or some part thereof.

Stays of Proceedings:

- When a party to a suit (whether plaintiff or defendant) is in military service or was on active duty within the last 60 days, a court **MAY** in its discretion grant a **stay** of the proceedings. When such a party requests the stay, it **MUST** be granted **unless** the court finds that the party’s ability to defend or prosecute the action is **not materially affected by military service** (§521).
- No fine and/or penalties under contracts may be imposed for failure to comply with the contract during the stay (§522).
- Garnishments, attachments and executions of judgments may also be stayed and/or vacated under similar terms. Court may grant *sua sponte*; if member requests a stay, it **MUST** be granted unless court finds that ability to comply with judgment or order is **not materially affected** because of military status (§523).
- The stays can remain in effect for the **entire period of active service plus three months** thereafter (§524).

Statutes of Limitation:

- During the period of active duty, prescriptive statutes (*both for and against the member*) are tolled and do not run, **regardless** of whether or not the member's service has materially affected compliance, and regardless of whether the cause of action arose before or during period of service (§525).
- Only exception is that the rule does not apply to time limitations established under federal internal revenue laws (§527).

Maximum Rate of Interest (§526):

- Applies to ***any interest-bearing obligation or liability***: car loans, mortgages, business loans for which the service member is personally liable (as a co-signor, co-maker or guarantor), credit cards, lines of credit, auto and equipment leases if they have a stated rate of interest);
- Applies to **pre-service** debts; **NOT** applicable to debts incurred during active service;
- Maximum rate is **6% per annum** (includes services charges, renewal charges, fees or any other charges except bona fide insurance);
- If member requests the reduction in interest rates, the creditor **MUST** either comply or apply to court for relief. Relief will be granted **only** if court determines that the member's ability to satisfy the obligation has not been "**materially affected**" by virtue of military service.
- The payments on the loan must be **re-amortized to 6% so that the payments are lowered**; otherwise there is no real relief to the member
- If the loan is co-signed or guaranteed, **everyone** gets the benefit of the 6% interest rate cap (§513)
- "Material effect" is **NOT** defined in the statute. Must compare pre-active duty total income with total active duty income (pay and allowances):

Base Pay

Basic allowance for quarters (BAQ)

Basic allowance for subsistence (BAS)

Flight pay
Pro-pay (medical officers and vets)
Imminent Danger pay
Foreign Duty pay (enlisted only)

- Interest rate cap does **NOT** apply to federal guaranteed student loans (20 U.S.C. §1078(d))

Protection of Dependents from Eviction (§530):

- If rent for house or apartment occupied for dwelling purposes does not exceed \$1,200.00 per month, leave of court must be granted before the member's wife, children or other dependants may be evicted. ***Applies regardless of whether quarters were rented before or after entry into military service.***
- In cases of eviction of dwelling quarters, court may grant a stay of up to three months or enter any other "order as may be just" **IF** the ability of the tenant to pay the rent is ***materially affected*** by reason of military service.
- **Misdemeanor offense** (1 year / \$100,000.00 fine or both) to evict or attempt to evict in violation of this section.

Installment Contracts (§531):

- Any member who contracts to purchase movable or immovable property and who pays an installment or makes a deposit under the contract **and subsequently enters military service** receives certain protections.
- No obligee who has received an installment or deposit under such a contract may terminate the contract or repossess the property for failure of the service member to make payments under the contract **except by court order.**
- As a condition to terminating the contract and allowing the obligee to resume possession of the property, the court may order the repayment of prior deposits or installments or may continue the case unless the service member's ability to continue paying on the contract is not materially affected by reason of military service.
- **Misdemeanor offense** (1 year or \$100,000.00 fine or both) for violation of this section.

Enforcement of Mortgages or Security Interests in Immovable or Movable Property (§532):

- Section applies provided property was owned at the commencement of service and is still owned when proceedings are filed; default on obligation must occur prior to or during period of service.
- Section applies both to movable and immovable property.
- Court may **stay** a proceeding commenced during member's military service to enforce the obligation if its terms are breached prior to or during the period of military service.
- Court **may** on its *own* motion, and **must**, on application of the member or any person on his behalf, **either stay** the proceedings or **dispose of the case in a manner that is equitable** to all parties **UNLESS** the court determines that the ability to comply with the obligation is not materially affected by the military service.
- No sale, foreclosure or seizure of property for nonpayment is valid if made during the period of military service or within three months thereafter, without either a written agreement between the parties or upon court order.
- **Misdemeanor offense** (*1 year or \$100,000.00 fine or both*) for violation of this section.

Conditions for Enforcing a Security Interest in Movable Property and Repossessing Movable Property after a Stay is Granted (§533):

- When proceeding to enforce a security interest in movable property has been stayed, the court may appoint three disinterested persons to appraise the property.
 - Based on the appraisal, the court may order the payment of a just sum to the service member or dependents as a condition to ending the stay and allowing proceedings to continue.
- If undue hardship to the dependents of the service member would result (*e.g.*, loss of the family automobile), no such appraisal will be ordered.

Protection Under Leases (§534):

- Section applies only to **premises** occupied for dwelling, professional, business, agricultural or similar purposes if the service

member executed the lease **before** the commencement of military service and he, or he and his dependents, occupied the premises for such purposes.

- Apparently the Act **DOES NOT** specifically cover the lease of movables
- Service member may terminate the lease by written notice to the landlord at any time after the beginning of the tenant's military service.
- If on a **month-to-month lease**, the lease is effectively **terminated 30 days after the first date on which the next rental payment is due** after the date such notice is delivered or mailed.
- All other leases are terminated on the last day of the month following the month in which the notice is delivered or mailed. Any unpaid rent is due only for the period before termination and any rent paid in advance for a period after termination will be refunded.
- Court may, upon application by the landlord before the termination period, impose such modifications or restrictions on the relief as seem warranted by justice and equity.
- **Misdemeanor offense** (*1 year or \$100,000.00 fine or both*) for any person knowingly to *seize, detain, or interfere* with the removal of the property of a tenant who has lawfully terminated a lease in accordance with the Act.

Enforcement of Storage Liens (§535):

- Absent a court order, no person can exercise any right to foreclose or enforce any lien for storage of household goods, furniture or personal effect of a service member for the duration of active service plus three months
- Violation of this section is a misdemeanor offense.

Deferral of Property Taxes (§560):

- Nonpayment of taxes by service member on movable or immovable property (owned and occupied for dwelling, professional, business, or agricultural purposes by him or his dependents at the beginning of military service and still so used) will not subject the property to forced sale to collect unpaid taxes without court permission.

- Applies to **all** taxes and assessments, *other than* income taxes, whether falling due before or during the period of military service.
- Court will take into consideration whether being in service materially affects the ability of the service member to pay the taxes and, if the court so decides, it can *stay the sale* for a period not exceeding six months from the date of termination of service.
- If court permits sale of property, *service member has right of redemption for at least six months after termination of service* or longer if local law permits.
- Interest charges on past due taxes shall not exceed six percent per annum.

Miscellaneous General Stay Provisions (§590):

- A person may, *at any time during the period of military service or within six months thereafter*, **apply to a court for relief** in respect of **any obligation or liability incurred by such person prior to the period of military service** or in respect of any tax or assessment whether falling due prior to or during the period of military service.
- The court may grant relief in a variety of ways, primarily stays and additional periods within which to comply with obligations.
- Section 590 may be the most comprehensive section of the entire Act, since it enables a court to enter basically any kind of relief it feels the service member should receive.
- If the lessor of an automobile or truck refuses to let the service member out of a lease after callup, member can apply to a court for a stay under §590, and ask for a stay in the obligation to continue paying the lease payments for the duration of the member's active duty.
 - When confronted with the possibility that the leased vehicle may be in the possession of the service member but the lessor's right to collect lease payments is stayed, the lessor will probably agree to terminate the lease and take back the vehicle.
 - This same provision would be available for leased equipment (for example, leased medical equipment).

Special provisions for medical professionals and attorneys (§592):

- Allows medical professionals and attorneys who enter active duty to suspend their malpractice policies without further payment of premiums, upon notice to the carrier
- Must be reinstated upon written demand by the professional within 30 days after release from active duty

Non-employer sponsored health insurance policies (§593):

- For health coverage that is not sponsored by the employer (which plans are covered by USERRA), service member has right to reinstatement of coverage
- No exclusions or waiting periods allowed upon reinstatement.

No discrimination for claiming rights under SSCRA (§518):

- Claiming rights under SSCRA cannot be the basis for:
 - A determination by lender that the member is unable to pay
 - A denial or revocation of credit
 - A change in the terms of an existing credit arrangement
 - A refusal to grant credit to the member
 - An adverse credit report
 - A refusal by an insurer to insure the member
- Enforcement of violation would be through Fair Credit Reporting Act, §603, 15 U.S.C. §1681

Uniformed Services Employment and Reemployment Rights Act (USERRA)

References:

- Uniformed Services Employment and Reemployment Rights Act (USERRA), P.L. 103-353, 108 Stat. 3149, as amended, mostly codified at **38 U.S.C. §§ 4301-4333**, as amended by Pub. L. 105-368, Veterans Programs Enhancement Act of 1998, 112 Stat 3315 (10 Nov. 1998).
- Department of Defense Instruction 1205.12, Civilian Employment and Reemployment Rights of Applicants for, and Service Members and Former Service Members of the Armed Forces [63 Fed. Reg. 3465, to be codified at 32 C.F.R. Part 104] (23 Jan 98).

Overview.

- What are the prerequisites (i.e., requirements) for a returning service member to gain the protections of USERRA?
- What are the protections granted by USERRA?
- How are the USERRA protections enforced if an employer doesn't comply with the law?

Prerequisites for Application of Statute. [38 U.S.C. § 4312].

- **Employee must have held a civilian job.**
 - USERRA applies to virtually all employers: the federal government, state governments, all private employers. No exemption for small size, etc.
 - Even a temporary job may get USERRA protections, if there was a reasonable expectation that employment will continue indefinitely or for a significant period."
 - Burden is on employer to prove that the job was not permanent.
- **Employee must have given prior notice of military service to civilian employer.**
 - Statute requires notice: it doesn't require that notice be written;
 - Notice may be given by the member or by a responsible officer from the member's unit.

- Exceptions: "military necessity" precludes notice (e.g., fact of deployment is classified) or where giving notice would be otherwise "unreasonable."
- **Employee's period of military service cannot exceed five years**
 - Five year limit on military service is cumulative.
 - The five-year clock restarts when employee changes civilian employers.
 - Some types of service (e.g., periodic/special Reserve/NG training, service in war or national emergency, service beyond five years in first term of service) do not count toward the five year calculation.
 - Five year period does not start fresh on 12 December 1994 (effective date of USERRA) - it reaches back to include all periods of military service during employment with given employer, unless such service was exempted from old VRR law's four year service calculations.
- **Employee's service must have been under "honorable conditions"**
 - No punitive discharge, no OTH discharge, and no DFR.
 - For service of 31 (or more) days, employer can demand proof of honorable conditions. Proof can consist of a DD Form 214, letter from commander, endorsed copy of military orders, or a certificate of school completion.
- **Employee must report back or apply for reemployment in a timely manner.**
 - If service up to 30 days, must report at next shift following safe travel time plus 8 hours (for rest).
 - If service 31 days to 180 days, must report or reapply within 14 days.
 - If service 181 days (or more), must report or reapply within 90 days.
 - Extensions are available if employee can show that it was impossible or unreasonable, through no fault of the employee, to report or reapply.
 - Reapplication need only indicate that you formerly worked there, are returning from military service, and request reemployment pursuant to USERRA. The request need not be in writing.
 - A member who fails to comply with USERRA's timeliness requirements doesn't lose all USERRA protections. The employer, however, is entitled to treat (and discipline) that employee's late reporting just like any other unauthorized absence.

Protections Afforded by the Statute. [38 U.S.C. §§ 4311-18.]

- PROMPT REINSTATEMENT;
- STATUS;
- ACCRUED SENIORITY;
- HEALTH INSURANCE COVERAGE;
- TRAINING, RETRAINING, OR OTHER ACCOMMODATIONS; AND
- SPECIAL PROTECTION FROM DISCHARGE (EXCEPT FOR CAUSE).

THESE REQUIREMENTS APPLY TO ALL EMPLOYERS: BOTH PUBLIC (FEDERAL, STATE, & LOCAL) AND PRIVATE. THERE IS NO "SMALL COMPANY" EXCEPTION.

Prompt Reinstatement.

- If the employee was gone 30 (or fewer) days, the employee must be reinstated immediately;
- If gone 31 (or more) days, the reinstatement should take place within a matter of days.

Status.

- The employee may object to the proffered reemployment position if it does not have the same status as previous employment. Examples:
 - "Assistant Manager" is not the same as "Manager," even if both carry the same remuneration.
 - One location or position may be less desirable than another (geographically, by earnings potential, or by opportunity for promotion).
 - A change in shift work (from day to night, for example) can be challenged.

Seniority.

- If the employer has any system of seniority, the employee returns to the "escalator" as if he or she had never left the employer's service.
- If the service was for 90 days (or less), the employee is entitled to the same job (plus seniority).
- If the service was for 91 days (or more), the employee is entitled to same "or like" job (status and pay), at employer's option, plus seniority.
- Seniority applies to pension plans as well (including SEP, 401(k) and 403(b) plans).
 - The seniority principle protects the employee for purposes of both vesting and amount of pension.
- If employer has a plan that does not involve employee contribution, employer must give employee pension credit as if employee never left.

- If pension depends on a variable that is hard to estimate because of the employee's absence (e.g., amount of accrual pension depends on % of commissions earned by employee), employer may use what employee did in the 12 months before service to determine pension benefits. Employer may not, in any case, use military earnings as basis to figure civilian pension accrual.
- If the employer has a plan that involves employee contributions, employee must make up the contributions after returning to work.
 - The employee has a period of three times the period of absence for military service, not to exceed five years, to make up the contributions. No interest may be charged by employer. Federal employees are entitled to a period of four times the period of absence to make up contributions.

Health Insurance.

- Immediately upon return to the civilian job, the employee (and his/her family) must be reinstated in the employer's health plan.
 - The employer may not impose any waiting period or preexisting condition exclusions, except for service-connected injuries as determined by the Department of Veterans Affairs.
- USERRA offers something new: continued employer health coverage, at the option of the employee, during the military service. [Federal employees should refer to 5 C.F.R. Part 890 (1996).]
 - Employers must, if requested, continue employee and family on health insurance up to first 30 days of service. Note: CHAMPUS does not cover dependents on tours of less than 31 days. Cost to employee cannot exceed normal employee contribution to health coverage.
 - Employees may request coverage beyond 31 days. Employer must provide this coverage up to 180 days or end of service (plus reapplication period), whichever occurs first. However, employers may charge employees a premium not to exceed 102% of total cost (employee + employer) of the entire premium from the first day of any tour over 30 days.

Training, Retraining, and Other Accommodations.

- An employer must take "reasonable efforts" to requalify the employee for his/her job.
 - "Reasonable efforts" are those that do not cause "undue hardship" for the employer. The USERRA language is similar to that employed in the Americans with Disabilities Act.
- If the employer cannot accommodate the employee, employer must find a position which is the "nearest approximation" in terms of seniority, status, and pay.

Special Protection Against Discharge.

- Depending on the length of service, there are certain periods of post-service employment where, if the employee is discharged, the employer will have a heavy burden of proof to show discharge for cause. This provision is a hedge against bad faith or pro forma reinstatement.
 - For service 181 days (or more), the subsequent protection lasts a year.
 - For service of 31 days to 180 days, the subsequent protection lasts for 180 days.
 - There is no special protection for service 30 (or less) days. However, the statute's general prohibition against discrimination or reprisal applies.
- Employers cannot discriminate in hiring, employment, reemployment, retention in employment, promotion, or any other benefit of employment because of military service.
 - Not only are current Active and Reserve Component military members covered by this provision, but so are former members--veterans.
- Employers cannot require someone to use vacation time/pay for military duty [§ 4316(d)].
 - **See** Veterans' Benefit Improvement Act of 1996, Pub. L. No. 104-275, § 311, 110 Stat. 3322 (9 Oct. 96), and **Graham v. Hall-McMillen Company, Inc.**, 925 F. Supp. 437 (N.D. Miss. 1996) (Reservist may not be fired for complaining about employer requiring him to use vacation pay/days for military duty.)
- Employers may not take adverse action against anyone (not just the military employee) because that person takes action to enforce rights under USERRA or testifies or assists in a USERRA action or investigation.
 - *Brandsasse v. City of Suffolk*, ___ F.Supp. ___, 1999 U.S. Dist. LEXIS 16630 (E.D. Va. 1999) [Police Department may not initiate internal affairs investigation against Reservist police officer in retaliation for requesting accommodations to attend Reserve training.]
- USERRA makes it easier to prevail in allegations of unlawful discrimination - if plaintiff can show that such discrimination was a motivating factor (not necessarily the sole motivating factor), the burden of proof is then on the employer to show that the action would have been taken even without the protected activity.
 - **See** *Robinson v. Morris Moore Chevrolet*, 974 F. Supp. 571 (E.D. Tex. 1997); *Gummo v. Village of Depew*, 75 F.3d 98 (2d Cir. 1996); *Novak v. Mackintosh*, 919 F. Supp. 870 (D.S.D. 1996); *Graham v. Hall-McMillen Company*, 925 F. Supp. 437, 443 (N.D. Miss. 1996); *Petersen v. Dep't of Interior*, 71 M.S.P.R. 227, 1996 MSPB LEXIS 735 (1996); and *Hanson v. Town of Irondequoit*, 896 F. Supp. 110 (W.D. N.Y. 1995). Such cases are proven by direct evidence of discrimination or by indirect circumstantial evidence of discrimination. **Duncan v. U.S. Postal Service**, 73 M.S.P.R. 86, 93-94 (1997).

- An employee's intervening act of misconduct can overcome an inference of military status discrimination inferred by the close proximity between military duty and an adverse employer personnel action.
 - ***Chance v. Dallas County Hospital District***, 1998 WL 177963 (N.D. Tex. 6 Apr. 98) (unpub.), *aff'd*, 176 F3d 294 (5th Cir. 1999).
- Federal military veteran/Reserve employees may raise "hostile work environment" discrimination claim based upon the individual's military status.
 - ***See Petersen v. Dep't of Interior***, 71 M.S.P.R 227, 1996 MSPB LEXIS 735 (1996). Currently, there is one reported state/local agency employer case on this theory, and the court refused to find any basis for "hostile work environment" protection in USERRA. ***See Church v. City of Reno***, 1999 WL 65205(9th Cir. 9 Feb. 99) (unpub.).

Other Non-Seniority Benefits.

- If the employer offers other benefits, not based on seniority, to employees who are on furlough or nonmilitary leave, the employer must make them available to the employee on military service during the service.
 - Examples: ESOP, low cost life insurance, Christmas bonus, holiday pay, etc.
- If the employer has more than one leave/furlough policy, the military employee gets the benefit of the most generous. However, if policies vary by length of absence, the military employee may only take advantage of policies geared to similar periods of absence (e.g., 6 months, 1 year, etc.) of absence.
- The employee may waive the right to these benefits if the employee states, in writing, that he/she does not intend to return to the job.
 - Note, however, that such a written waiver cannot deprive the employee of his other reemployment rights should he "change his mind" and seek reemployment.

Assistance and Enforcement. [Generally, 38 U.S.C. §§ 4322-24].

- **The National Committee for Employer Support of Guard and Reserve (1-800-336-4590).**
 - DoD agency. Provides information on USERRA to employees and employers, and seeks to resolve disputes on an informal basis.
 - National and state ombudsman program first step to resolve employer-employee USERRA disputes. Website: <http://www.ncesgr.osd.mil>
- **The Veterans' Employment and Training Service (VETS) (1-202-693-4701).**
 - Department of Labor agency.
 - Primary responsibility to formally investigate claims of USERRA violations. Website: <http://www.dol.gov/dol/vets/>.
 - VETS will investigate to determine if any violation occurred.

- In cases of USERRA violation, VETS will attempt to negotiate a suitable resolution with the employer.
- When resolution is not possible, VETS will refer the case as appropriate (MSPB Office of Special Counsel for Federal employees or Department of Justice for other employees).
 - Upon referral, the OSC or DOJ may choose to provide counsel for representation free of charge. If they do not, or the veteran does not wish government representation, the individual may retain private counsel. Action against the employer may then be taken in Federal Court or the MSPB (for federal employers).
- Veteran NEED NOT request VETS assistance prior to suing, but must wait for completion of VETS action if assistance requested. See 38 U.S.C. § 4323 (a)

Formal Enforcement.

- Course of action depends on employer. See *generally*, 38 U.S.C. § 4323
 - Private Employers: Action in U.S. District Court. Venue wherever the private employer maintains a place of business.
 - State employees:
 - Cases brought on employee's behalf by the United States are under the jurisdiction of any Federal district court located where the state exercises authority.
 - Originally, the DOJ simply provided free representation to the veteran. Statute changed in 1998 to make the United States the party in interest because of Supreme Court finding in *Seminole Tribe v. Florida*, 517 U.S. 44 (1996) that Congressional abrogation of State sovereign immunity violates the 11th Amendment of the Constitution.
 - 1998 USERRA amendments also provide for personal State court USERRA action by state employee. True availability of that remedy is doubtful in light of the U.S. Supreme Court decision in *Alden v. Maine*, 119 S. Ct. 2240 (1999) (Held State courts do not have to enforce federal law-based employee damage actions against state agencies since it violates the Eleventh Amendment).
 - Federal Employees. See *Generally* 5 CFR 1208. The MSPB has appellate jurisdiction over probationary, and non-probationary federal employees for USERRA claims. See 5 CFR 1208.2. There are no time limits for individuals to file USERRA discrimination claims before the MSPB. See 5 CFR 1208.12 (2000). Process:
 - Veteran may choose to request assistance from VETS or go directly to MSPB. If assistance from VETS requested, must wait for VETS process completion before filing MSPB completion.
 - File appeal with MSPB. MSPB Office of Special Counsel may choose to represent veteran, or veteran may retain counsel (and, if a prevailing party, request attorneys fees).

- If dissatisfied with MSPB administrative hearing result, appeal to MSPB, and if necessary to Court of Appeals for the Federal Circuit as in other MSPB appeals.
- VETS has informally retained its policy, dating from the preceding statutory scheme, of not assisting veterans who are represented by counsel.
 - Legal assistance attorneys should beware of holding themselves out to employers or to VETS as the veteran's "counsel."
- The USERRA adds several new "teeth" to the enforcement of reemployment rights.
 - Gives the DOL (VETS) subpoena power to aid in the conduct of its investigations.
 - Employees who prevail on their claims may be entitled to reinstatement, lost pay (plus prejudgment interest), attorney's fees, and litigation costs.
 - Employees who can demonstrate that reinstatement is not a viable remedy may seek "front pay" damage remedies. **See *Graham v. Hall-McMillen Company***, 925 F. Supp. 437, 443-446 (N.D. Miss. 1996).
 - If the court finds that the violation was willful, the court may double the back pay award. (Does not apply to MSPB cases involving the federal government as employer.) Where there is evidence of willful employer noncompliance that could result in a double damage award, a jury trial may be authorized. ***Spratt v. Guardian Automotive Products, Inc.***, 997 F.Supp.1138 (N.D. Ind. March 17, 1998).
- Extraterritorial Jurisdiction. Congress passed an amendment to the USERRA giving Reservists and veterans residing overseas protections under the Act, provided that they work for the federal government or a private company incorporated in the United States or controlled by a United States corporation.